IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED;3.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.No.15131 of 2006

M.Sikandar Batcha ..Petitioner

vs

1.The Collector
Madurai District
Madurai

2.The District Supply Officer
Collectorate
Madurai ..Respondents

This Writ Petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No.2293/1994 from the file of Tamil Nadu Administrative Tribunal with the prayer to issue a writ of Certiorarified Mandamus to call for the records from the file of the 1t respondent in Proceedings No.91721/92/A3 dated 15.10.93 and the proceedings of the 2nd respondent in Na.Ka.165930/93/B11 dated 18.10.93 and quash the same and direct the respondents to reinstate the applicant as Junior Assistant in the respondent Office with backwages.

For petitioner :Mr.J.S.Venkatesan
for Mr.B.S.Gnanadesikan

For respondents :Mrs.Lita Srinivasan, G.A.

ORDER

The petitioner has challenged the order dated 15.10.1983 of the 1st respondent, the Collector, Madurai District and the order dated 18.10.93 of District supply Officer, Madurai District terminating him from service and for a direction to reinstate him in service with backwages.

2. Brief facts leading to the writ petition are as follows:
(i) The petitioner has submitted that he has studied upto Plus Two and was appointed as Office Assistant on 17.12.1990 in the Tamil Nadu State Marketing Corporation on a consolidated pay. The godowns were dismantled from 31.7.91 and consequently, he was relieved from the post. Subsequently, he was appointed as a Record Clerk on temporary basis in Central Prison, Madurai by order of the Superintendent of Police dated 1.8.1991.

(ii)The petitioner's father who was working as an Office Assistant in the office of the District Revenue Officer fell ill and in order to help him, the petitioner resigned his job. He was relieved on 1.10.1991 under the orders of the Superintendent of Police, Central Prison, Madurai. His father died on 23.1.1992, while in service. Thereafter, the petitioner made an application dated 12.4.1992 to the competent authority to appoint him as Office Assistant on compassionate grounds. In the meanwhile, the second respondent by an order dated 20.4.83 directed the petitioner to work as Watchman. But the petitioner did not respond to the said letter as he was awaiting orders from the respondent for appointment on compassionate grounds. Subsequently, the petitioner was appointed as Junior Assistant on 18.9.1993 and he joined the said post on 20.4.1993. Without any due notice, he was visited with an order dated 15.10.1983 terminating his services. Aggrieved by the same, the petitioner has preferred the Original Application before the Tamil Nadu Administrative Tribunal for the reliefs as stated above.

3. (i)The respondents in their counter affidavit have stated that the petitioner was initially working as Office Assistant in the Tamil Nadu State Marketing Corporation Limited, Madurai region from 17.12.1990. While working in TASMAC, without the knowledge of 1st respondent, he managed to attend an interview for the post of Record Clerk in the Central Prison Madurai on 17.7.1991. After selection, he got himself relieved from the Tamil Nadu State Marketing Corporation on 31.7.1991 and joined duty in Central Prison on 1.8.1991. It is further stated that the petitioner has joined the said post later on. On receipt of the instructions issued in G.O.Ms.No.223, Prohibition and Excise department dated 8.11.1991 to give preference to the retrenched personnel of TASMAC Limited and in compliance of the Government Letter dated 2.7.1992, retrenched personnel in the existing vacancies were appointed temporarily in the posts which were outside the purview of the Tamil Nadu Public Service Commission. Since the name of the petitioner was also found in the list of retrenched personnel received in the Collectorate from the TASMAC Limited, the petitioner's name was also sponsored to the post of regular Watchman in the Industrial Training Institute. The Assistant Director/Principal of the Industrial Training Institute had also directed the petitioner to appear before him with the original certificates for getting appointment and the petitioner did not appear and join duty.

(ii) The respondent has further submitted that without furnishing all these facts and the employment provided to him, the petitioner had got an appointment in Madurai District Revenue Unit on compassionate grounds. Since there was a suppression on the part of the petitioner, and the appointment as Junior Assistant being temporary, his services were terminated immediately by the Collector on 15.10.1993 and that he was relieved on 18.10.1993.

(iii) It is further submitted that appointment on compassionate grounds cannot be claimed as a matter of right. If the petitioner was really in indigenous circumstances, he would have joined the post of Watchman provided to him earlier. Since there was suppression on the part of the petitioner in getting the post of Junior Assistant, his services were terminated without notice. Hence, the respondent prayed for the dismissal of the Writ Petition.

4. (i) Mr.T.S.Venkatesan, learned counsel for the petitioner submitted that the impugned order does not contain any reason. Learned counsel for the petitioner submitted that the impugned order is totally a non-speaking order, arbitrary and in violation of principles of natural justice. He further submitted that at the time of applying for the post on compassionate grounds, the petitioner was not employed in service and he was awaiting orders of appointment. Even assuming that an order of appointment was issued to the petitioner, the petitioner is entitled to the reject the offer and seek for a better post, i.e., the post of Office Assistant in the Collectorate.

(ii) Learned counsel for the petitioner further submitted that as the order of appointment on compassionate grounds indicated that his services would be terminated only on the ground that if he is not entitled for such appointment and having satisfied that the petitioner possess the required qualification for the post of Junior Assistant and appointed directly to the said post, it is not open to the respondents to terminate his services on the ground of suppression.

(iii) Learned counsel for the petitioner further submitted that since on the date of application i.e., 12.4.1992, the petitioner was not employed and therefore there is no question of suppression of previous employment and under such circumstances, it is not open to the respondents to come to a hasty and arbitrary conclusion that the petitioner had suppressed his previous employment resulting in termination of his service.

(iv) Learned counsel for the petitioner further submitted that even assuming there was a suppression on the part of the petitioner, principles of natural justice require that the petitioner be given an opportunity to put forth his case before terminating his service.

(v) For all these reasons, the petitioner has prayed that the order of termination has to be set aside and he should be restored as Junior Assistant with monetary benefits.

5. (i) Per contra, Mrs.Lita Srinivasan, learned counsel for the respondents submitted that the petitioner had suppressed the fact of his previous employment right from the beginning. The petitioner without the knowledge of the previous employment had managed to attend the interview for the post of Junior Assistant and got himself relieved from the Tamil Nadu State Marketing Corporation. She further submitted that the fact that the petitioner's name was sponsored to the post of Watchman through the Training Institute, Madurai and that the direction of the Assistant Director/Principal of Industrial Training Institute to appear before him with the original records were not placed before the District Collector, prior to the petitioner's joining the post of Junior Assistant in the Collectorate, Madurai District and therefore it amounts to suppression.

(ii) Learned Government Advocate further submitted that compassionate appointment is given only to a family to mitigate the financial hardship and in the instant case since the petitioner had already refused the appointment as Night Watchman, it should be presumed that the family was not in need of appointment on compassionate grounds and therefore, the termination of his services on the ground of suppression is justified and does not require any interference.

(iii) Learned Government Advocate has further submitted that as the petitioner was appointed only on temporary basis, the services of such person is liable to be terminated at any time by the appointing authority without any notice and therefore, no notice is referred. Hence, the action of the respondent is not in violation of principles of natural justice.

6. Heard the learned counsel for the petitioner and the learned Government Advocate and perused the materials available on record.

7. A perusal of the pleadings disclose that consequent to the death of the petitioner's father on 23.1.1992, the petitioner has made an application to the competent authority on 12.4.1992 to appoint him as Office Assistant on compassionate grounds. On the said date, admittedly, the petitioner was not in employment. Though his name was sponsored to the post of regular Watchman in the Industrial Training Institute, Madurai, pursuant to the directions of the Government to give preference to the retrenched persons of TASMAC, the petitioner did not choose to appear before the Assistant Director/Principal of Industrial Training Institute. Even as the averments in the counter affidavit, the petitioner was only directed to appear before the Principal of the Industrial Training

Institute for the appointment as Night Watchman and there is nothing to indicate that the petitioner was issued with an appointment order on 20.4.93. Even assuming that the petitioner was offered an appointment to the post of regular Watchman in the above said institute, as long as the petitioner had not accepted the said offer and joined the post of Watchman, there is no question of suppression of previous employment. The contention of the petitioner that he was awaiting orders on his representation for compassionate appointment and that therefore, he was not inclined to accept the offer of Night Watchman is acceptable, for the reason that it is for the petitioner to choose the better prospects. Therefore, I do not agree with the contention of the learned counsel for the respondents that there was any suppression on the part of the petitioner in securing the appointment by fraudulent means. Even assuming that there was any suppression, the impugned order does not contain any reasons for termination.

8. It is settled legal position that in the absence of any reasons contained in the impugned order, it is not open to the respondents to support the impugned order by adducing various reasons in the counter affidavit. Further, even assuming that the impugned order has been passed for the reasons contained in the counter affidavit, the order certainly casts a stigma on the petitioner in securing the employment and therefore he ought to have been given a reasonable opportunity before terminating him from the services. It is trite law that even temporary employees are entitled to protection under Article 311(2) of the Constitution of India. Therefore, the impugned order is in violation of the principles of natural justice. Having appointed the petitioner on compassionate grounds, subject to the petitioner's satisfying the qualifications required for the post of Junior Assistant, the 1st respondent ought to have shown compassion to the petitioner before terminating his services.

9. For all these reasons, the impugned order is liable to be set aside and accordingly the order of the respondent is set aside. The first respondent is directed to reinstate the petitioner as Junior Assistant with continuity of service from the date of termination. Since the petitioner has not worked as Junior Assistant during the period of litigation, the question as to whether the petitioner is entitled to backwages or not has to be decided by the respondent, in the light of the findings of this Court.

10. Consequently, the writ petition is allowed. No costs.

3.10.2007

index:yes
internet:yes/no

Note to office: Issue order copy on 18.12.2007

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To
1.The Collector
Madurai District
Madurai

2.The District Supply Officer
Collectorate
Madurai

S.MANIKUMAR,J.

(sal)

W.P.NO.15131/2006

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